

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BROWNELLS, INCORPORATED, an Iowa
corporation,

Plaintiff,

v.

THANX MEDIA, INC., an Illinois
corporation,

Defendant.

Case No. 23-cv-13783

COMPLAINT

Plaintiff BROWNELLS, INCORPORATED (“Brownells”), by and through its attorneys, Faegre Drinker Biddle & Reath LLP, and for its Complaint against Defendant THANX MEDIA, INC. (“Thanx Media”), states as follows:

PARTIES

1. Brownells is an Iowa corporation with its headquarters and principal place of business in Grinnell, Iowa. Accordingly, Brownells is a citizen of the State of Iowa.

2. Thanx Media is an Illinois corporation with its headquarters and principal place of business in Glen Ellen, Illinois. Accordingly, Thanx Media is a citizen of the State of Illinois.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) because Brownells and Thanx Media are citizens of different states (Iowa and Illinois, respectively). Further, the amount in controversy, as set forth below, exceeds \$75,000, exclusive of interest and costs.

4. Venue is appropriate in this Court pursuant to an agreement between the parties that places exclusive venue “in the courts of Chicago, Illinois.” (*See* March 10, 2021 Professional Services Agreement (the “**2021 PSA**”), attached hereto as **Exhibit 1.**)

5. Alternatively, venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the Northern District of Illinois is the Defendant’s principal place of business and, therefore, a substantial part of the events or omissions giving rise to the claims set forth herein occurred in the Northern District of Illinois by virtue of Defendant’s directing the activities of its employees from the Northern District of Illinois.

BACKGROUND FACTS COMMON TO ALL COUNTS

6. Brownells seeks to recover over four million dollars Brownells paid to Thanx Media for website development pursuant to five related agreements executed by Brownells and Thanx Media. Brownells alleges, as set forth in further detail herein, that Thanx Media failed not only to produce a serviceable website for Brownells, but also failed to honor its warranty and service obligations. Due to Thanx Media’s multiple breaches of the parties’ agreements, Brownells terminated the parties’ relationship via written notice on August 24, 2023. Further, Brownells seeks a declaration from this Court pursuant to 28 U.S.C. § 2201 that it properly terminated the various agreements between the parties, given Thanx Media’s prior breaches.

I. BROWNELLS AND THANX MEDIA EXECUTE A GENERAL PROFESSIONAL SERVICES AGREEMENT IN MARCH OF 2021.

7. Brownells is a hunting supply dealer, specializing in firearms and firearms-related accessories. Brownells maintains a physical retail location in Grinnell, Iowa, off of Interstate 80, but has for many years maintained a robust catalog sales business, which it has transitioned to a prosperous ecommerce business.

8. Thanx Media advertises on its website that it helps “businesses of all sizes successfully launch their online vision, and optimize that vision to set them up for long-term success.” <https://www.thanxmedia.com/about/>. Thanx Media purports to have partnerships with other technological platforms and suppliers, including Optimizely. *See* <https://www.optimizely.com/>.

9. In 2021, Brownells decided to update its website because the then-current website relied on old technology. Due to its previous relationship with Thanx Media and Thanx Media’s work on other unrelated projects for Brownells, Brownells decided to rely on Thanx Media for the implementation.

10. Brownells and Thanx Media executed the 2021 PSA on or around March 10, 2021. The 2021 PSA functions as an overarching agreement—each specific project is governed by a specific scope of work (“SOW”), but the 2021 PSA provides the rules that govern the parties’ overall business relationship. As described in the preamble, “This Agreement sets forth the general terms and conditions under which [Brownells] may periodically engage Thanx to provide certain professional, operational, or technical services (“**Professional Services**”) to [Brownells] each pursuant to Order Form(s) and/or Statement(s) of Work . . . executed by both parties.” (Exhibit 1 at 1.)

11. The 2021 PSA allows either party to terminate upon ten (10) days’ notice in the event of a breach and failure to cure by the other party. *See* Exhibit at 3, ¶ 4.

12. Thanx Media also provided an express warranty that it would perform its services “in a good and workmanlike manner” and “substantially in accordance with the specifications provided in the relevant SOW applicable to such Professional Services.” *See* Exhibit 1 at 4-5, ¶ 8.

13. Illinois law governs the 2021 PSA. Exhibit 1 at 7, ¶ 17.

14. Thanx Media first undertook to research and provide recommendations for different technologies on which Brownells could base its new website. After Thanx Media completed this initial process, it selected Optimizely (a third-party content service) as its chosen platform.

II. THE PARTIES EXECUTE THE OPTIMIZE SOW

15. Subsequently, and pursuant to the 2021 PSA, on or around December 31, 2021, Brownells and Thanx Media executed a statement of work for the implementation of the Optimizely platform in the Brownells' website redevelopment (the "**Optimize SOW**"), a copy of which is attached as **Exhibit 2**. The effective date of the Optimizely SOW is December 24, 2021.

16. The Optimizely SOW is governed by the general terms and conditions set forth in the 2021 PSA, to the extent the Optimizely SOW does not contain specific terms that conflict with the 2021 PSA. In such case, the Optimizely SOW governs.

17. The Optimizely SOW allows Brownells to terminate the Optimizely SOW for convenience upon 90 days' notice. *Id.* In the event Brownells exercises its right to terminate under this provision, it must pay 25% of the value of the terminated SOW. *Id.* "In the event Client terminates this SOW for convenience ninety-one (91) or more days from the days [sic] of the start of the project, Client will be responsible for one further month's fees, calculated based on the average run rate of all previous months of the terminated SOW prior to termination. *Client will not be responsible for any other fees attributable to the terminated SOW.*" *Id.* (emphasis added).

18. To prepare for post-launch technical support, the parties executed a "24/7 Proactive Response Service Agreement" (the "**2023 PRSA**" attached as **Exhibit 3**) and a "Master Service Level Agreement for 24/7 Proactive Response Services," (the "**2023 MSLA**" attached as **Exhibit 4**), both with an effective date of February 1, 2023. The 2023 PRSA and 2023 MSLA contemplate

a third party, Niteco, would provide technical support services on Thanx Media's behalf. Exhibit 4 at ¶ 1.5.

19. The 2023 PRSA and the 2023 MSLA both incorporate by reference the terms and conditions from the 2021 PSA to the extent that the 2023 PRSA and the 2023 MSLA do not conflict with the terms of the 2021 PSA.

20. The 2023 PRSA (which contains the terms and conditions of the 2023 MSLA) automatically renews each year on February 1, 2023, unless cancelled 90 days prior to the anniversary date. Exhibit 3 at ¶ 6.

21. Going into February 2023, prior to the website launch, testing of the implementation process revealed serious deficiencies and bugs in the website's design and functionality. Because Brownells could not wait for Thanx Media to fix all the deficiencies in the design and functionality, the parties decided to launch the new Brownells site on February 15, 2023.

22. The new Brownells website launched without several key features, discussed further below. It also launched with significant technical deficiencies that affected performance. In the first few weeks after launch, Brownells devoted significant efforts to just maintaining the website and keeping it alive. Brownells and Thanx Media met weekly to discuss issues with the website, its features and its functionality.

23. Pursuant to the 2023 PRSA and 2023 MSLA, Niteco was responsible for providing the Azure DevOps (the "**DevOps System**") interface into which Brownells could submit requests for service ("**tickets**"). Niteco would then triage these tickets, prioritizing them by severity. Thanx Media would interface with the DevOps System, address support tickets in the website, then identify that it resolved the ticket. Brownells submitted each deficiency or bug into the DevOps

System, which put Thanx Media on notice of the deficiencies (and its ensuing warranty obligations).

24. All the while, and despite having an express warranty in which Thanx Media agreed to provide repair and remedy any deficiencies in the deliverables, Thanx Media charged Brownells for *fixing broken code and reworking failed functionality*. Thanx Media effectively double charged Brownells—charging Brownells for faulty implementation then charging them *again* to fix their own mistakes.

25. In short, the new Brownells website simply does not work (and never worked) as Brownells intended. Worse, Thanx Media promised enhancements that it could not deliver because it spent a majority of the post-implementation time keeping the website functioning and fixing the deficiencies it caused during implementation. The new website is still not free of defects and deficiencies.

III. BROWNELLS TERMINATES THE AGREEMENTS DUE TO THANX MEDIA'S NONPERFORMANCE

26. On August 24, 2023, Brownells sent notice to Thanx Media in writing (the “Termination Notice,” attached as **Exhibit 5**) that Brownells was exercising its right to terminate the Optimizely SOW and related Order Forms upon 30 days’ notice.

27. Because the 2023 PRSA and 2023 MSLA were tied to the Optimizely SOW, Brownells’ Termination Notice also terminated both the 2023 PRSA and 2023 MSLA.

28. Finally, the Termination Notice also advised Thanx Media of various breaches of the 2021 PSA. First, Brownells advised Thanx Media that it failed to properly implement the recommended sort order feature within the new website. The recommended sort order feature displays products in a given category based on data analytics that determine which products would

resonate more with a given potential purchaser. This was a key feature that Brownells bargained for in the agreements.

29. Second, Brownells advised Thanx Media that it breached the 2021 PSA due to errors in the implementation process that damaged search engine optimization (“SEO”) components. Search engines, such as Google, display results of a search in order of relevance. Search engines determine whether a website is relevant by using “search bots” that scour websites for key information and terms that make the website more relevant to the search. Search engine optimization is the process by which websites create content that the “search bots” recognize as more relevant, thereby placing the website closer to the top of the search results. Search engine optimization is an important element of ecommerce and was a material term of the parties’ agreements.

30. Thanx Media’s implementation of the SiteVibes’ customer reviews code within the Optimizely system in the new website caused the “search bots” to lose the ability to read customer reviews on Brownells’ site. Google will elevate sites with customer reviews but push sites down that do not give customers the ability to review the product. The implementation error by Thanx Media caused the bots to not be able to read the customer reviews and, accordingly, Google did not think Brownells allowed customers to review its products. Thus, Google punished Brownells by pushing it down in the search results.¹ While Thanx Media corrected the error in April that allowed the “search bots” to finally read the reviews, Brownells will not see an improvement to search rankings until Google rechecks their algorithm which is not expected for another month, at which time Brownells may be removed from the “penalty box.”

¹ This is most relevant when searching for a product, as opposed to searching for Brownells directly. If a customer is searching for a particular rifle scope, other vendors will appear before Brownells simply because Thanx Media’s error penalized Brownells.

31. Further, Thanx Media failed to remap 301 old uniform resource locator “URLs” (commonly known as website addresses) to new URLs. URLs are unique identifiers used to locate a resource on the internet. When a website is revamped or improved, it is sometimes necessary to change URLs and to redirect old URLs to new ones. Thanx Media failed to properly redirect the old URLs, which caused users to receive errors that certain websites were not available. This, in turn, caused a drop in the search engine rankings.

32. Brownells submitted a list of over 200 outstanding “bugs” and seven major outstanding issues, along with other deficiencies with its August 24, 2023 letter, an excerpt of that spreadsheet is attached as **Exhibit 6**.² All of these issues affecting core functionality of the website constituted breaches of the 2021 PSA, the Optimizely SOW, the 2023 PRSA and the 2023 MSLA.

33. Brownells also requested that Optimizely (which is a third-party vendor) audit the implementation process. Unsurprisingly, Optimizely identified significant failures by Thanx Media in the implementation process.

34. On August 30, 2023, Thanx Media responded to the Termination Notice (a copy of which is attached as **Exhibit 7**). First, Thanx Media claimed that the Optimizely SOW expired in February 2023, and rejected any attempt to terminate the Optimizely SOW or the March 2023 Order Form upon 30 days’ notice.

35. Thanx Media’s response, however, fails to explain why a March 2023 Order Form, attached as **Exhibit 10**, requests payment for services that are clearly related to the Optimizely SOW, including costs for a Backend Developer, Frontend Developer, Senior Tester, Automation Tester, and Solutions Architect. *See Exhibit 7*. Moreover, the Order Form itself refers to the Product as “Professional Services – *Optimizely Resource Team*” *Id.* (emphasis added). Clearly,

² The full sheet is voluminous and not suitable to attach as an exhibit.

Thanx Media was still integrating the Optimizely platform into the new Brownell's website in August 2023, a full five months after it claims the Optimizely SOW expired. Accordingly, Thanx Media's claim that Brownells improperly terminated the Optimizely SOW and Order Form were improper and that said terminations were ineffective lacks any merit. In fact, the Order Form attached as Exhibit 7 is more evidence that Thanx Media wants Brownells to pay twice for a single product—a functioning website.

36. Thanx Media also rejected any attempt to terminate the 2021 PSA, claiming that the “breaches” cited by Brownells in its Termination Notice were either not material, were someone else's fault, or had been resolved (despite the system *still* not functioning as intended). Thanx Media made no effort to cure the breaches cited in Termination Notice.

37. Brownells responded on September 5, 2023, a copy of which is attached as **Exhibit 8**, and advised Thanx Media that it had failed to cure the breaches set forth in the Termination Notice, that termination of the 2021 PSA and related agreements was proper, that Brownells intended to revoke access to Thanx Media and its subcontractors as of 4:00 p.m. central time that day, and demanded that Thanx Media transfer the Azure DevOps Board to Brownells.

38. Brownells received a response from counsel for Thanx Media on September 8, 2023, attached as **Exhibit 9**. This letter purported to accuse Brownells of wrongful termination and seek damages for the full value of the Order Form term and amounts outstanding, for a total of \$736,369.50 (despite Thanx Media's letter of August 30 agreeing to terminate the Order Form on November 22, 2023).

39. Thanx Media never remedied the breaches set forth in the August 24, 2023 letter, nor did it take any steps to honor its warranty obligations pursuant to the 2021 PSA. To date, Brownells has paid Thanx Media \$4,246,669.41 for a website that does not work as intended.

Thanx Media's claim that the 2021 PSA never guaranteed a site free of defects is no excuse for overcharging Brownells for a defective website.

COUNT I: BREACH OF 2021 PSA

40. Brownells incorporates and realleges paragraphs 1 through 39 as if fully set forth herein.

41. The 2021 PSA is a valid enforceable contract, supported by consideration.

42. Under the 2021 PSA, Thanx Media expressly agreed to provide Professional Services set forth in associated scopes of work, including the Optimizely SOW.

43. Thanx Media agreed to provide those services "in a good and workmanlike manner and . . . substantially in accordance with the specifications provided in the relevant SOW applicable to such Professional Services." Exhibit 1 at 4, ¶ 8.

44. Thanx Media failed to provide services in accordance with the 2021 PSA by delivering a website with a defective recommended sort order feature, damaged search engine optimization, and the over 200 other bugs and deficiencies identified in the August 24, 2023 Notice of Termination. All these deficiencies constitute material breaches of the parties' 2021 PSA.

45. Further, Thanx Media has *still* not delivered a complete website that functions as the parties intended. As late as June 2023, Thanx Media was still submitting Order Forms and requiring payment for Optimizely implementation services, charging Brownells over \$100,000 *per month* to deliver a deficient website. Thanx Media's failure to deliver an acceptable website within a reasonable time frame for the project constitutes a material breach of the 2021 PSA.

46. Thanx Media's breaches of the 2021 PSA. damaged Brownells by requiring Brownells to: (1) pay twice for deficient services and (2) now pay for additional services to repair and complete Thanx Media's deficient work. The amount of Brownells' damages exceeds \$75,000, exclusive of interest and costs.

47. Pursuant to the 2021 PSA (which governs the Optimizely SOW), Brownells is entitled to recover its reasonable attorneys' fees and costs of bringing suit. *See* Exhibit 1 at 7, ¶ 17.

48. Brownells has fully performed its obligations under the 2021 PSA. Brownells has also satisfied all conditions precedent to bringing suit.

49. Pursuant to the 2021 PSA, Brownells is entitled to recover its reasonable attorneys' fees and costs of bringing suit. *See* Exhibit 1 at 7, ¶ 17.

WHEREFORE, Plaintiff Brownells, Incorporated respectfully requests that the Court enter judgment in its favor and against Defendant Thanx Media, Inc. on Count I of its Complaint and enter an order awarding Plaintiff:

- Damages in an amount to be determined at trial, but in excess of \$75,000;
- Reasonable attorneys' fees and costs; and
- Such other relief as the Court deems necessary and proper.

COUNT II: BREACH OF THE OPTIMIZE SOW

50. Brownells reincorporates and realleges Paragraphs 1 through 39 as if fully set forth herein.

51. The Optimizely SOW is a valid and enforceable contract supported by consideration.

52. Under the terms of the Optimizely SOW, Thanx Media agreed to implement the Optimizely platform and update Brownells' website. It was to provide an "acceptable version of the Brownells website to launch beginning Q3 of 2022." Thanx Media was to deliver a website that met Brownells' specifications, of which Thanx Media was fully aware.

53. The product delivered by Thanx Media failed to meet Brownells' specifications. Thanx Media delivered a website with a defective recommended sort order feature, damaged

search engine optimization, and the over 200 other bugs and deficiencies identified in the August 24, 2023 Notice of Termination. All of these deficiencies constitute material breaches of the Optimizely SOW.

54. Further, Thanx Media has *still* not delivered a fully functioning website. In addition, Thanx Media has not made agreed enhancements to the website because it has spent a majority of its time remedying broken code. Thanx Media's failure to deliver an acceptable website within a reasonable time frame for the project constitutes a material breach of the Optimizely SOW.

55. Finally, Thanx Media has breached the Optimizely SOW by overcharging Brownells. Thanx Media has failed to deliver a functioning website, yet accepted payments from Brownells during the implementation process. Thanx Media then charged Brownells for *each correction or fix to the website that it should have performed originally*.

56. Thanx Media's breaches of the Optimizely SOW damaged Brownells by requiring Brownells to: (1) pay twice for deficient services and (2) now pay for additional services to repair and complete Thanx Media's deficient work. The amount of Brownells' damages exceeds \$75,000, exclusive of interest and costs.

57. Brownells has fully performed its obligations under the Optimizely SOW and related Order Forms. Brownells has also satisfied all conditions precedent to bringing suit.

58. Pursuant to the 2021 PSA (which governs the Optimizely SOW), Brownells is entitled to recover its reasonable attorneys' fees and costs of bringing suit. *See* Exhibit 1 at 7, ¶ 17.

WHEREFORE, Plaintiff Brownells, Incorporated respectfully requests that the Court enter judgment in its favor and against Defendant Thanx Media, Inc. on Count II of its Complaint and enter an order awarding Plaintiff:

- Damages in an amount to be determined at trial, but in excess of \$75,000;

- Reasonable attorneys' fees and costs; and
- Such other relief as the Court deems necessary and proper.

COUNT III: BREACH OF THE 2023 PSRA AND 2023 MSLA

59. Brownells reincorporates and realleges Paragraphs 1 through 39 as if fully set forth herein.

60. The 2023 PSRA and 2023 MSLA are valid and enforceable contracts supported by consideration.

61. Under the terms of the 2023 PSRA and 2023 MSLA, Thanx Media agreed to provide ongoing support after the launch of the Brownells website through a third party, Niteco.

62. Brownells began submitting tickets highlighting deficiencies in the website design, functionality, and architecture through Niteco's DevOps System immediately after the launch on February 15, 2023.

63. Thanx Media failed to correct major deficiencies identified by the tickets. For example, Thanx Media failed to correct the defective recommended sort order feature, damaged search engine optimization, and the over 200 other bugs and deficiencies identified in the August 24, 2023 Notice of Termination. The failure to correct these issues is a material breach of the 2023 PSRA and 2023 MSLA

64. Thanx Media has *still* not delivered a fully functioning website. In addition, Thanx Media has not made agreed enhancements to the website because it has spent a majority of its time remedying broken code. Finally, Thanx Media has breached the 2023 PSRA and 2023 MSLA by overcharging Brownells. Thanx Media has failed to deliver a functioning website, yet accepted payments from Brownells during the implementation process. Thanx Media then charged Brownells for *each correction or fix to the website that it should have performed originally*.

65. Thanx Media's breaches of the 2023 PSRA and 2023 MSLA damaged Brownells by requiring Brownells to: (1) pay twice for deficient services and (2) now pay for additional services to repair and complete Thanx Media's failure to correct deficient work. The amount of Brownells' damages exceeds \$75,000, exclusive of interest and costs.

66. Brownells has fully performed its obligations under the 2023 PSRA and 2023 MSLA. Brownells has also satisfied all conditions precedent to bringing suit.

WHEREFORE, Plaintiff Brownells, Incorporated respectfully requests that the Court enter judgment in its favor and against Defendant Thanx Media, Inc. on Count III of its Complaint and enter an order awarding Plaintiff:

- Damages in an amount to be determined at trial, but in excess of \$75,000; and
- Such other relief as the Court deems necessary and proper.

COUNT IV: BREACH OF EXPRESS WARRANTY

67. Brownells reincorporates and realleges Paragraphs 1 through 39 as if fully set forth herein.

68. The 2021 PSA contains an express warranty that Thanx Media will perform the Professional Services "in a good and workmanlike manner and . . . substantially in accordance with the specifications provided in the relevant SOW applicable to such Professional Services." Exhibit 1 at 4, ¶ 8.

69. Brownells submitted deficiencies in the website consistently since the website's launch on February 15, 2023 through the Azure DevOps system, managed by Niteco, culminating in the 10-day notice to cure on August 24, 2023. *See* Exhibit 5. The deficiencies that Brownells requested Thanx Media to remedy pursuant to its express warranty are outlined in Paragraphs 28 through 33 above, and expressly incorporated herein by reference.

70. Brownells satisfied all conditions precedent, including providing adequate notice as set forth in the terms of the express warranty.

71. Thanx Media breached the express warranty by failing to cure the deficiencies noted above within 10 days. Thanx Media further breached the express warranty by charging Brownells to fix the deficiencies noted by Brownells in the Azure DevOps system, effectively causing Brownells to pay twice for the same product.

72. Thanx Media's breaches of the express warranty damaged Brownells by requiring Brownells to: (1) pay twice for deficient services and (2) now pay for additional services to repair and complete Thanx Media's deficient work. The amount of Brownells' damages exceeds \$75,000, exclusive of interest and costs. Pursuant to the 2021 PSA (which governs the Optimizely SOW), Brownells is entitled to recover its reasonable attorneys' fees and costs of bringing suit. *See* Exhibit 1 at 7, ¶ 17.

WHEREFORE, Plaintiff Brownells, Incorporated respectfully requests that the Court enter judgment in its favor and against Defendant Thanx Media, Inc. on Count IV of its Complaint and enter an order awarding Plaintiff:

- Damages in an amount to be determined at trial, but in excess of \$75,000;
- Reasonable attorneys' fees and costs; and
- Such other relief as the Court deems necessary and proper.

COUNT V: UNJUST ENRICHMENT (IN THE ALTERNATIVE TO COUNTS I-IV)

73. Brownells incorporates and realleges paragraphs 1 through 3 and paragraph 5 as if expressly realleged herein.

74. Thanx Media agreed to provide certain services in exchange for payment from Brownells. Specifically, Thanx Media agreed to update and optimize the Brownells' website and customer interface with the Optimizely platform.

75. Brownells paid \$4,246,669.41 to Thanx Media to perform the services Thanx Media agreed to perform. However, Thanx Media failed to perform the services. For example, Thanx Media delivered a website with a defective recommended sort order feature, damaged search engine optimization, and over 200 other bugs and deficiencies. When asked to fix the deficiencies caused by Thanx Media's failure to perform, Thanx Media charged Brownells for the time spent fixing its own deficiencies, effectively charging Brownells twice for services *never* properly rendered.

76. Yet, Thanx Media unjustly retains the money previously paid by Brownells. Thanx Media's retention of the monies previously paid by Brownells is unjust and violates principles of justice, equity, and good conscience.

77. Accordingly, Brownells is entitled to reimbursement of the monies paid to Thanx Media.

WHEREFORE, Plaintiff Brownells, Incorporated respectfully requests that the Court enter judgment in its favor and against Defendant Thanx Media, Inc. on Count V of its Complaint and enter an order awarding Plaintiff:

- Damages in an amount to be determined at trial, but in excess of \$75,000; and
- Such other relief as the Court deems necessary and proper.

COUNT VI: DECLARATORY JUDGMENT

78. Brownells incorporates and realleges Paragraphs 1 through 39 as if fully stated herein.

79. Pursuant to 28 U.S.C. § 2201, “In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”

80. An actual controversy between the parties exists. Thanx Media claims that Brownells’ termination of the parties’ agreements for cause lacks merit and, accordingly, claims it is owed \$736,369.50, of which \$144,247.50 represents unpaid invoices and \$592,122 represents future value of the parties’ agreements.

81. As discussed above, Thanx Media is in breach and, accordingly, Brownells is within its rights to terminate the agreements pursuant to the 2021 PSA. Brownells’ termination is proper and no amount is due and owing under the parties’ agreements due to Thanx Media’s prior material breaches.

82. Brownells seeks a declaration from this Court that Thanx Media is in breach of the parties’ agreements, that Brownells was within its rights to terminate the parties’ agreements, and that Brownells is not liable to Thanx Media for any past or future value of the contracts.

WHEREFORE, Plaintiff Brownells, Incorporated respectfully requests that the Court enter judgment in its favor and against Defendant Thanx Media, Inc. on Count VI of its Complaint and enter an order:

- Declaring Thanx Media in breach of its agreements with Brownells and declaring Brownells’ termination proper under the parties’ agreements; and
- Such other relief as the Court deems necessary and proper.

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By: /s/ Ehren M. Fournier

By Its Attorneys

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